Filed 11/13/20 In re W.B. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re W.B., a Person Coming Under the Juvenile Court Law.	
HUMBOLDT COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. E.J., Defendant and Appellant.	A158501 (Humboldt County Super. Ct. No. JV180134)

The juvenile court denied E.J.'s (Mother) motion to compel the Humboldt County Department of Health & Human Services (Department) to assess and evaluate her request to voluntarily relinquish her parental rights for minor W.B. to be adopted by a close family friend, R.R. Mother appealed, contending the agency abused its discretion by applying incorrect legal criteria to its decision whether to accept her request to relinquish her parental rights for adoption of W.B. by R.R., placed impermissible restrictions on acceptance of a relinquishment, failed to conduct a reasonable and balanced evaluation required by law, and failed to provide required counseling services before rejecting Mother's designation of R.R. Mother also

contends the trial court erred in terminating her parental rights at the Welfare and Institutions Code[1] section 366.26 hearing by considering and relying upon the assumption that visitation with Mother would continue after termination of parental rights. Father filed a joinder in Mother's arguments. We affirm.

I. BACKGROUND

This is the second appeal we have considered in this case. We incorporate by reference facts from our prior nonpublished opinion, *In re W.B.* (Mar. 23, 2020, A156956), and summarize those facts relevant to the determination of the issues raised in this appeal.

A. Removal of W.B. and Detention

After W.B. tested positive for methamphetamine and amphetamine at birth, the Department filed a section 300 petition on her behalf based on concerns about the parents' drug use.[2] At the detention hearing, the court vested the Department with authority over W.B.'s placement. In June 2018, the Department placed W.B., at Mother's request, with her close friend, R.R. When W.B. was placed with R.R., her half sisters J.D. and A.M. lived with her and R.R. was in the process of adopting them.

B. Jurisdictional and Dispositional Hearing

The Department filed a jurisdiction report asserting the parents will continue to use, and expose the minor to, methamphetamine and be unable to provide adequate supervision. The report also outlined Mother's extensive child welfare history, noting past allegations of general neglect, substance

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] Mother had tested positive for methamphetamine during her pregnancy and Father admitted he had used methamphetamine five days before W.B.'s birth.

abuse, and sexual abuse allegations, and Mother's failure to reunify and the termination of her parental rights as to W.B.'s siblings, J.D. and A.M. Following a contested hearing, the court sustained the petition and set the matter for a dispositional hearing.

The Department submitted a disposition report in advance of the hearing. At the time of the report, W.B. was still residing with R.R. Because Mother was required to have supervised visits and was waitlisted for visits at the Family Connection Center, the Department agreed R.R. could supervise visits. R.R. represented she would be comfortable ending visits if Mother was unsafe or under the influence, and the Department requested a log of all visits documenting date, time, and length of visit, and recommended a set schedule of two hours twice per week. Following a contested dispositional hearing in August 2018, the court adopted the recommendations of the Department and set the matter for a six-month status review hearing.

C. Department's Section 387 Petition

Prior to the six-month status review hearing, on December 14, 2018, the Department filed a section 387 petition to remove W.B. from R.R.'s care. The section 387 petition alleged W.B.'s placement with R.R. was "n[o] longer effective in providing for the protection and safety of the child" because R.R. "allowed [Mother] unauthorized access to the child . . . and state[d] she is not able to have any boundaries with [Mother] and is unable or unwilling to protect the child from [Mother]." The Department's report in support of its petition asserted R.R. had been allowing Mother to visit W.B. at R.R.'s home for long periods of time not approved by the social worker. R.R. admitted she had "difficulty in establishing and maintaining boundaries with [Mother]."

The parties submitted on the petition, and the court found continued residency with R.R. was contrary to W.B.'s welfare. The court ordered

"placement, care, custody, and control" of W.B. to be vested with the Department and W.B. was placed with a local resource family.

The Department's jurisdiction/disposition report in connection with the section 387 petition and a six-month status review report detailed the grounds for removing W.B. from R.R.'s care. Those reports noted, beginning in late October 2018, the visitation supervisor often picked up W.B., Mother, and Father together from R.R.'s home. Following an incident of domestic violence between the parents, a social worker met with R.R. R.R. informed the social worker she "had been relying on [Mother] as a support in parenting the children" and "she believed that she and [Mother] were co-dependent." R.R. also stated she had allowed Mother to use her vehicle, which resulted in it being impounded because Mother did not have a valid driver's license.

Following that conversation, the social worker instructed R.R. to stop supervising Mother's visitation because of Mother's relapse and the domestic violence incident. R.R. agreed to do so. However, R.R. then allowed Mother to visit W.B. and spend the night at her house. The day after the social worker's conversation with R.R., Mother informed the social worker she was at R.R.'s house, she had been there all day, and acknowledged spending the night at R.R.'s house. Mother reported she had been going over to R.R.'s house three or four times per week to assist R.R. in getting Mother's older children ready for school. She stated R.R. enjoys her presence as a parent to provide support for the older children. The six-month status report noted R.R., when interviewed about the allegations, stated she was ill, "did not know that [Mother] was in her home and that [Mother] had slept on her couch," and "could not recall for certain who turned over the care of the baby to her on the night in question." The Department concluded R.R. "violated

the written directive of being Responsible for Providing Care and Supervision and she violated the written directive of Cooperation and Compliance."

The Department concluded Mother presented a risk to the physical health of W.B. because of the unsupervised visitation. The Department further determined R.R. was not a "safe and suitable placement" because of R.R.'s "lack of boundaries with [Mother], her admitted co-dependent relationship with [Mother], and her choice to violate orders of the Court and directions from the social worker by allowing [Mother] unsupervised access to the child." Accordingly, the Department explained, it removed W.B. The Department also noted it had removed W.B.'s half sisters, J.D. and A.M., from R.R.'s home and placed them with J.D.'s paternal grandmother, Maureen D. It was the goal that J.D., A.M., and W.B. would all be adopted by Maureen D.

Shortly before the section 387 jurisdiction/disposition hearing, Mother filed an "At Issue Memo" asserting her unauthorized contact with W.B. was insufficient to sustain the section 387 petition and requested that it be denied. The Department filed a response arguing that R.R., as part of the resource family approval (RFA) process,[3] "took several classes and signed an agreement that she would not provide unauthorized contact with the child to either parent." Based on R.R.'s actions, the Department indicated it was taking steps to revoke R.R.'s RFA certification. The Department thus argued

[3] "Implemented statewide on January 1, 2017, the Resource Family Approval Program (RFA) provides a unified approval process to replace the multiple processes to approve foster care homes, relatives and nonrelative extended family members, and adoptive homes for the placement of dependent children." (*In re Charlotte C.* (2019) 33 Cal.App.5th 404, 408; § 16519.5, subd. (a).)

R.R. would no longer qualify as an RFA caretaker, so R.R. would need to seek another form of benefits for W.B.'s care.

At the contested jurisdiction hearing, R.R., Mother, and another witness testified about R.R.'s care for W.B. and her relationship with Mother. Following argument of counsel, the court found the section 387 petition true by clear and convincing evidence. The court expressed concern that R.R.'s conduct was detrimental to both W.B. and Mother because Mother did not feel the need to engage in services because she had "backdoor" access to W.B. The court continued disposition on the section 387 petition so the parties could submit additional information regarding placement options.

The Department subsequently submitted an addendum report to address placement. The Department noted its RFA unit determined R.R. "violated written directives" and was taking legal steps to revoke her certification. Once the RFA certificate is revoked, R.R. would not be eligible to receive funding through the State Department of Social Services. Accordingly, the Department supported a permanent plan of adoption with Maureen D., who was also caring for J.D. and A.M., so that the siblings could grow up together. The Department further stated it was against visitation with R.R. because W.B. had made a smooth transition to her current foster placement and, as the Department did not intend to return W.B. to R.R., visitation would create confusion for W.B.

D. Section 388 Petition and De Facto Parent Request by R.R.

Prior to the section 387 jurisdiction/disposition hearing, R.R. filed a section 388 petition seeking to return W.B. to her custody. R.R. acknowledged her mistake and admitted she had "co-dependent tendencies," but asserted the sources of the problem had been removed. R.R. discussed

her love for W.B. and requested the court designate her as W.B.'s de facto parent.

E. Joint Hearing on the Section 387 Petition, the Section 388 Petition, the De Facto Parent Request, and the Six-month Status Review

The juvenile court conducted a three-day joint hearing on the disposition of the section 387 petition, the section 388 petition, the de facto parent request, and the six-month status review.[4] The parties, as well as R.R., presented multiple witnesses and argument to the court. In April 2019, the court issued an order denying R.R.'s section 388 petition and her request for de facto parent status. The court also adopted the Department's recommended findings and orders as to the section 387 petition.[5] Mother and R.R. both timely appealed.

F. Prior Appeal

In our prior opinion, *In re Winter B.*, *supra*, A156956, we affirmed the juvenile court's findings and orders. Specifically, we concluded that substantial evidence supported denial of the section 387 petition and W.B.'s removal from R.R.'s home. We also concluded the Department had no legal obligation to provide reasonable efforts to avoid removal because R.R. had " 'no right to custody or continued placement' " as a nonrelative extended family member. We further determined the juvenile court did not abuse its discretion by finding that W.B.'s placement with her siblings in Maureen D.'s home was in her best interests, and that the "importance of placing W.B. with her siblings, the evidence regarding W.B.'s comfort in [Maureen D.'s]

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[4] The Department filed two addendum reports to its prior six-month status review report, providing updates on Mother's substance abuse treatment and W.B.'s placement status.

[5] The court did not issue its findings and orders on the six-month review at this time, but instead did so after a later hearing.

household, and the potential impact of the Department's decision to revoke R.R.'s RFA certificate, provided sufficient evidence" to support denial of the section 388 petition. Although we concluded the juvenile court erred in denying R.R.'s request for de facto parent status, we found the error harmless and affirmed the juvenile court's orders in their entirety.

G. Six-month Review

In April 2019, at the six-month review hearing, the juvenile court terminated both parents' reunification services and set a section 366.26 hearing. Neither parent filed a writ petition.

H. Section 388 Petition to Place W.B. with Maureen D. and Request for Designated Relinquishment

In June 2019, during pendency of the prior appeal, the Department filed a section 388 petition to have W.B. placed with Maureen D. and W.B.'s half sisters, J.D. and A.M. At the first hearing on the section 388 petition, Mother's counsel informed the juvenile court that Mother wanted to specifically relinquish her parental rights for adoption by R.R. The attorney for the Department requested an opportunity to submit a brief because she did not believe specific relinquishment was "even a possibility based on the status of [R.R.]." The court set the matter for an evidentiary hearing, set dates for receipt of a report and briefing on the legal ability to do a designated relinquishment, and continued the section 388 petition hearing to the same date.

In early July, Mother told a social worker that she would only do a voluntary relinquishment if she could specifically designate R.R. The social worker told Mother it would not consider placing W.B. with R.R. due to concerns about R.R., but was willing to assist Mother with relinquishment. Mother then told the social worker she would wait and see how the section 366.26 hearing goes before making a decision. Shortly thereafter, the

social worker sent Mother a letter offering to meet with her again to further discuss relinquishment.

Around the same time, Mother's counsel e-mailed the social worker requesting that the Department do an assessment as required under *In re R.T.* (2015) 232 Cal.App.4th 1284 and provide counseling in connection with the designated relinquishment. The Department responded that Mother had stated to the social worker she was not interested in relinquishment at this time and wanted to see how things turned out at the section 366.26 hearing. After Mother's counsel confirmed that Mother was still "very much looking to relinquish [W.B.] to [R.R.]," the Department stated it was "unable to accept a specific relinquishment to [R.R.]." Counsel for the Department noted that the siblings and W.B. had just been removed from R.R., and R.R. had lost her RFA certification and her ability to pass a home study. Mother's counsel insisted the Department was still obligated to complete an assessment and relinquishment counseling. The Department confirmed it was happy to sit down with Mother again, but noted Mother only seemed interested in relinquishment to R.R. The Department also stated it could "not accept a relinquishment if there is any concern the parent may be actively using," and that the Department would like to arrange hair follicle and urine testing to confirm Mother's sobriety to move forward with discussions.

Ahead of the continued section 388 hearing, the Department filed an at-issue memorandum/pretrial statement, addressing, among other things, its legal position regarding acceptance of Mother's designated relinquishment. The Department stated it had been making efforts to place W.B. together with her half siblings in Maureen D.'s home, noting Maureen D. had completed all necessary training required to care for an infant, was RFA certified, and was ready, willing, and able to take W.B. into

her home and adopt all three children so they could remain an "intact sibling group for life."

The Department explained: "The RFA process is a newly designed placement program created to streamline the adoption and permanency process. It is an all inclusive approval program for the placement of children for adoption, legal guardianship and foster care. However, just because a prospective caretaker receives RFA approval, it does not mean they will be approved for a specific permanent placement of a child. There has to be an assessment over a period of time for that to occur. When a caretaker becomes RFA approved this is the minimal approval required to be a foster care provider. There is a completely separate assessment as to whether a[n] RFA approved foster parent can become the identified permanent plan.

"In order to be approved to be identified as an adoptive parent of a child, the applicant must maintain RFA approval and pass a more stringent assessment. . . . [¶] [R.R.]'s RFA certification was revoked after the children were removed from her care. [R.R.] was provided with all the required information regarding her right to appeal the revocation of her RFA status including the Notice of Action and was advised she had 25 days to appeal, but she never appealed the revocation of her RFA status and that revocation is now a final determination and [R.R. cannot] apply for RFA certification for two years."

The Department also described its e-mail exchange with Mother's counsel, agreeing with counsel that "if a parent asks to relinquish a child the department must have a process in place in order to proceed with a relinquishment." The Department stated it was "happy to sit down with [M]other again and explain in detail why we will not assess [R.R.] at this time." The memo explained "as part of its relinquishment process, [the

Department] requires the parent requesting the relinquishment provide clearance from a medical doctor or psychologist that a parent is of sound mind and able to make the relinquishment decision," but stated the Department "is unable to provide referrals to doctors for this purpose." The Department noted it also had "grave concerns" that Mother continues to actively use methamphetamine and had asked Mother to drug test.

The at-issue memorandum distinguished *In re R.T.*, *supra*, 232 Cal.App.4th 1284, and discussed why the Department believed placement with R.R. was not in W.B.'s best interest and why the child's best interest was "to be adopted by [Maureen D.] and for [W.B.] to grow up with her siblings." It explained if W.B. was not moved to Maureen D.'s home, the current foster home would have preference for assessment to adopt W.B., but explained if she were adopted by the current caretaker, W.B. would be separated from her siblings, who had been identified as a "bonded sibling group."

The Department also filed a supplemental at-issue memorandum/pretrial statement, explaining at length the legal importance of sibling relationships and discussing why placement with Maureen D. and W.B.'s siblings was in W.B.'s best interests, despite Mother's recent successful visits and W.B.'s positive response to Mother. The Department also filed an updated report and addendum report in support of the section 388 petition.

At an August 2019 hearing, the juvenile court heard argument from the parties on the Department's section 388 petition to place W.B. with Maureen D. W.B.'s counsel, who also represented A.M. and J.D., confirmed that W.B.'s sisters wanted to live with her, and that Maureen D. was doing a "fantastic job" of meeting A.M.'s and J.D.'s needs. Counsel was very

concerned, however, about disrupting W.B.'s stability during pending appeals, Father's section 388 petition, R.R.'s placement request and Mother's specific relinquishment request, and asked the court to leave W.B. in her current placement until a "solid identified permanent plan" was in place. Father's counsel joined in minor's counsel's arguments, but also stated he wanted W.B. placed with R.R., but if that could not happen, wanted her to remain in her current foster care placement.[6] Mother's counsel stated Mother wanted W.B. placed with R.R., but if that could not happen, Mother preferred placement with Maureen D. The juvenile court denied the Department's section 388 petition, finding a move would not be in the child's best interests where her ultimate placement had not yet been resolved.

On the same day as the Department's section 388 hearing, Father filed his own section 388 petition stating that Mother had "lied to [him] about possible paternity." Father sought DNA testing and reunification services.

I. Motion to Compel Assessment of Designated Relinquishment

In mid-August 2019, Mother filed a motion to compel the Department to conduct a formal assessment and evaluation of her request to specifically relinquish W.B. to R.R. for adoption, and provide Mother with counseling. Mother argued she and Father had not received required services and advisements regarding their request to voluntarily relinquish their parental rights, there had been no assessment of whether the Department could place W.B. with R.R. or whether it was in W.B.'s best interests, and there had been no showing that any testing had been arranged or any drug use affected

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[6] Around the same time the court was considering the Department's section 388 petition, W.B.'s foster parent, S.S., had filed a request for de facto parent status. At the section 388 hearing, the juvenile court granted the request for de facto parent status. S.S. later filed a prospective adoptive parent designation, which was subsequently denied.

Mother's ability understand the "content, nature and effect of signing the relinquishment."

In discussing her motion with the court at a hearing, Mother's counsel admitted Mother wanted to change W.B.'s placement to live with Maureen D. and her siblings until Mother's appeal was resolved, and that it was in W.B.'s best interests to do so. The court continued the section 366.26 hearing, the hearing on Father's section 388 petition, the foster parent's request to be designated a prospective adoptive parent, and Mother's motion to compel to be heard on the same date in September.

In advance of the continued hearing date, both Mother and the Department filed at-issue memoranda and addenda setting forth their respective positions on specific relinquishment and issues related to the section 366.26 hearing. The Department also filed the section 366.26 report, an adoption assessment addendum to the section 366.26 report, an addendum to the adoption assessment addendum, and an amended request for judicial notice of portions of J.D.'s and A.M.'s dependency files. In the interim, the court ordered W.B. placed with Maureen D., at the request of the Department and Mother.

J. Combined Hearing on Pending Motions

On September 30, 2019, the juvenile court began the hearing on the pending motions, including Mother's motion to compel.

Mother testified at the hearing. Mother said she met with a social worker a week earlier to discuss the designated relinquishment. The social worker went over some forms that outlined the relinquishment process and forms she said would need to be signed by a psychiatrist or mental health worker. The social worker recommended that Mother go to a primary care physician to start the process, but Mother said she did not have a primary

care physician. The social worker told Mother she could not recommend anyone specific for a mental health assessment because it was a conflict of interest, but she gave Mother some suggestions where to get started. Mother was not provided with referrals to be assessed whether she was of sound mind, and the Department did not offer to assist with payment or coordination. Mother further testified that with respect to the mental health assessment she had not made any progress because she was told that "even if that was what I chose to do, was to relinquish her to [R.R.], even if the appeal comes through, the Department still will not turn [W.B.] over to [R.R.]."

Mother also testified as to her current thoughts and feelings on relinquishment, stating that she did not want to relinquish W.B. and wanted "to keep her," but "as far as options go," if she had to relinquish W.B., she wanted her to go to R.R. Mother testified it was "Absolutely" important that her girls grow up together, but also recognized that placing W.B. with R.R. would separate the girls. Asked if she believed this was in W.B.'s best interests, Mother responded, "Honestly. . . Honestly, I don't know."

The court heard argument from the parties on both Mother's motion to compel and on Father's section 388 petition. The following day, the court denied both Mother's motion to compel and Father's section 388 petition.

As to Mother's motion to compel, the juvenile court offered a lengthy oral explanation of the court's ruling. The court began by recognizing that "while we certainly have to protect everybody's rights in regards to the process, we do have to focus on what is in the child's best interests, and that really is the overarching principle of all that we do." Even assuming R.R. was an "appropriate adoptive parent, which is not clear that that's the case," and assuming Mother "could properly, from a mental health standpoint,

make a relinquishment that everybody would accept," the court still concluded that moving W.B. to R.R. would not be in her best interests.

The court noted it was clear the "children were all identified from the beginning that they would be together at the end of all this" and that finally the children were "all together, and that that is what the Court decided was in this child's best interests, to be united with . . . the siblings . . . if they couldn't be returned to Mom." The court also said the other thing that was "problematic" about the relinquishment was that it was "actually not really 100 percent clear that [Mother] really wants relinquishment," noting that Mother actually wanted the child returned to her, but "if she doesn't get the child back, she wants—then she wants to relinquish to [R.R.] because of their closeness, but she doesn't want that to happen unless she knows sort of every stone has been overturned—you know, turned for her to get the child back."

The court denied the motion to compel the Department to further assess the relinquishment to R.R. because the court had already concluded it was not in W.B.'s best interests to be separated from her siblings, and requiring the Department to conduct a further assessment would be an "exercise in futility" and "just requiring action that is completely unnecessary." The court noted the analysis of W.B.'s best interests had been done and that it had in fact "propelled all of [the Department's] recommendations." The court also noted "to Mom's credit," when asked if it was in W.B.'s best interests to place her with R.R., she admitted she did not know, "an honest, heartfelt answer in regards to the matter."

In sum, the court found there had been "no showing at all that another move in [W.B.'s] life, especially since she's been placed with siblings, would be in [W.B.'s] best interests." The court also observed it had focused on the maxim of jurisprudence that "the law neither does nor requires idle acts, and

that's why I don't think that more needs to be pursued with the relinquishment; because I don't think that is in the child's best interests, and to pursue it, really, just is a torturous request to make."

K. Section 366.26 Hearing

The section 366.26 hearing trailed Mother's and Father's motions. After reviewing the documents in its file and hearing argument from the parties, the court adopted the Department's recommended findings and orders, terminated Mother's and Father's parental rights, maintained W.B. as a dependent of the court, did not designate a prospective adoptive parent, and set a date for the six-month postpermanency hearing.

Mother and Father both timely appealed.

II. DISCUSSION

A. Motion to Compel Assessment of Voluntary Relinquishment

We first address Mother's contentions that the Department abused its discretion by (1) failing to make a reasoned and balanced assessment of her proposed designated relinquishment, and (2) requiring Mother to prove her competence and demonstrate her sobriety before the Department would evaluate her specific relinquishment request.

A birth parent of a child who is a dependent of the juvenile court may voluntarily relinquish his or her child for adoption if the agency is willing to accept the relinquishment. (§ 361, subd. (b)(1).) In doing so, the parent may designate the person or persons with whom the parent intends the child to be placed. (Fam. Code, § 8700, subds. (a) & (f); *In re R.T.*, *supra*, 232 Cal.App.4th at p. 1301 (*R.T.*); *In re R.S.* (2009) 179 Cal.App.4th 1137, 1151–1152.) Whether the agency accepts a parent's voluntary relinquishment "is a determination vested in the adoption agency." (*R.T.*, at

p. 1308 ["An adoption agency has discretion to accept or refuse a relinquishment"].)

"There are several regulatory prerequisites to agency acceptance of a parent's relinquishment. Among them, 'the agency shall determine and document in the case record: [¶] (1) That the parent has chosen the plan of adoption for the child and freely chooses to relinquish the child. [¶] (2) That the agency is able to place the child for adoption. [¶] . . . [¶] (4) That the parent has received required services and advisement as appropriate to the category of parents as described [in the regulations]. [¶] (5) That the parent has the ability to understand the content, nature and effect of signing the relinquishment.' " (*R.T., supra,* 232 Cal.App.4th at pp. 1301–1302, quoting Cal. Code Regs., tit. 22, § 35135, subd. (a).)

In *R.T., supra,* 232 Cal.App.4th 1284, Division Three of this court considered what procedures an agency must follow upon receiving a request for voluntary relinquishment. The court concluded that although the "regulations do not specify how an agency determines if it 'is able to place the child for adoption,' " it must make a reasoned assessment of a child's best interests before rejecting a designated relinquishment. (*Id.* at pp. 1302, 1305.) "An evaluation of the best interest of a child offered for adoption requires a balanced evaluation of the benefits and detriments of the proposed adoption. A guideline for making such an evaluation is found in a regulation used to assess an applicant for adoption. (Cal. Code Regs., tit. 22, § 35181.) In assessing adoptive applicants, the agency weighs a variety of factors that include the applicant's personal characteristics, financial stability, and 'commitment and capability to meet the needs' of the child. (*Id.*, § 35181, subd. (c).)" (*Id.* at p. 1306.)

The juvenile court and this court review an agency's rejection of a parent's voluntary relinquishment of a dependent child for abuse of discretion. (*R.T.*, *supra*, 232 Cal.App.4th at pp. 1307–1308.) We must determine "whether the agency ' "acted arbitrarily and capriciously, considering the minor's best interests," ' " applied "an incorrect legal standard to the facts" or "if the agency's decision is ' "patently absurd or unquestionably not in the minor's best interest." ' " (*Id.* at p. 1307.)

To accept Mother's designated relinquishment, the Department had to find that it would be able to place W.B. for adoption with R.R. (Cal. Code Regs., tit. 22, § 35135, subd. (a)(2) ["agency shall determine" that "it is able to place the child for adoption"].) "This provision has been understood to mean that an agency will not accept a designated relinquishment until it completes an approved home study of the designated placement and determines the placement to be in the child's best interest." (*R.T., supra,* 232 Cal.App.4th at p. 1302, citing *In re R.S., supra,* 179 Cal.App.4th at p. 1149, fn. 5.)

Mother contends the Department abused its discretion by failing to investigate and report the results of its investigation into whether adoption by R.R. would be in W.B.'s best interests. We disagree. As the Department repeatedly explained in e-mails to Mother's counsel, reports to the court, pretrial statements, and at the hearing on Mother's motion to compel, the Department determined it was unable to place W.B. with R.R. because her RFA certification had been revoked and she did not appeal the revocation. "Resource family approval" means that the applicant or resource family successfully meets the home environment assessment and permanency assessment standards, and is in lieu of the adoption home study approval. (§ 16519.5, subds. (a) & (c)(5); *In re Charlotte C.*, *supra*, 33 Cal.App.5th at p. 416 ["purpose of the RFA is to provide 'a unified, family friendly, and child-

centered resource family approval process to replace the existing multiple processes for . . . approving guardians and adoptive families' "].) Mother argues she can find no authority that revocation of RFA certification *necessarily* means the Department could not approve the adoption or an adoption home study for R.R., nor is there any evidence that R.R.'s certification could not be reinstated. But as discussed above, the RFA program is a uniform and comprehensive approval process intended to replace the need for an adoption home study. Mother does not dispute the fact that R.R. lost her RFA certification and failed to appeal that revocation. Nor does Mother cite any authority suggesting it would be *an abuse of discretion* for the Department to reject a voluntary relinquishment to an individual whose RFA approval has been revoked.[7]

Mother relies heavily on *R.T.* in her briefing, and urges us to conclude, as the court did there, that the Department's failure to complete a reasoned and balanced assessment of R.R. was an abuse of its discretion. The facts of this case, however, are very different from the circumstances of *R.T.* There, the minor tested positive for drugs at birth. Before the jurisdictional hearing, father stated he would like the minor to go to his two aunts. (*R.T.*, *supra*, 232 Cal.App.4th at pp. 1292–1293.) The paternal aunts were preferred relatives under the relative assessment statute, and the aunts requested the child be placed with one of them. (*Id.* at p. 1293.) The agency initiated home safety assessments, but told the aunts it favored " 'keeping the child in his current placement.' " (*Ibid.*) A social worker later testified the agency never

[7] For the first time, in her reply brief, Mother addresses at length why specific statutes and regulations do not appear to require an RFA approval for R.R. to be assessed for designated relinquishment. We will not consider these issues raised for the first time on reply. (See *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 693.)

considered the aunts for adoption. (*Id.* at p. 1294.) The aunts' home inspections were completed when the child was three months old, and their homes were approved, but the agency refused to consider moving the child and did not evaluate the relatives under the appropriate statutory criteria for relative preference. (*Id.* at pp. 1293–1294.)

The court concluded the agency had failed to make "a reasoned assessment of the child's best interest" where the agency rejected the father's designated relinquishment because honoring the parent's choice of adoptive parents would entail moving the child " 'to a place he never lived before.' " (*R.T.*, *supra*, 232 Cal.App.4th at p. 1305.) While that was certainly a "relevant consideration," it was not dispositive. (*Ibid.*) Because the agency failed to "assess the proposed adoptive parents and weigh the benefits and detriments of adoption," the court remanded for a further assessment. (*Id.* at pp. 1306, 1308.)

Here, by contrast, W.B. had already been removed from R.R.'s home because R.R. could not maintain boundaries with Mother and the juvenile court had recently rejected R.R.'s section 388 petition to have W.B. returned to her care. R.R. lost her RFA certification and did not challenge that decision. W.B. meanwhile, had been placed with her two sisters, with whom she had a close and bonded sibling relationship. Maureen D., who was caring for all three girls, had been RFA approved and was providing a stable placement where W.B. could be raised in the same home as her sisters, a goal identified for W.B. by all parties at the beginning of and throughout the dependency process. Indeed, Mother herself admitted at the hearing on her motion to compel that it was "absolutely" important for W.B. to grow up with her sisters and she "honestly" did not know if it was in W.B.'s best interests to be placed with R.R. if it would mean separation from her siblings.

In any event, even if R.R. was eligible to adopt W.B., Mother has demonstrated no prejudice from the failure to conduct a relinquishment assessment here.[8]

Our Supreme Court instructs us to "apply a harmless-error analysis when a statutory mandate is disobeyed, except in a narrow category of circumstances when we deem the error reversible per se. This practice derives from article VI, section 13 of the California Constitution, which provides: 'No judgment shall be set aside, or new trial granted, in any cause . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.' " (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624.) A " 'miscarriage of justice' " occurs when it is reasonably probable a result more favorable to the appealing party would have been reached in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836; see *R.T., supra,* 232 Cal.App.4th at p. 1301 [applying *Watson* standard].)

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[8] We reject Mother's argument that the Department's failure to complete an assessment requires reversal without a showing of prejudice under *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 and footnote 2, 1207 and *In re Richard S.* (1991) 54 Cal.3d 857, 865. *Manzy W.* and *Richard S.* both concerned whether a particular statutory requirement is directory or mandatory, i.e. " 'whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.' " (*Richard S.*, at p. 865; *Manzy W.*, at p. 1204, fn. 2.) " 'Courts determine whether an obligatory statutory provision should be given mandatory or directory effect by ascertaining legislative intent,' " and " ' "[t]here is ' "no simple, mechanical test" ' for making this determination." ' " (*In re D.P.* (2018) 21 Cal.App.5th 154, 161.) Mother does not explain why the statutory procedural requirements she claims were violated are either mandatory or directory, nor does she discuss legislative intent.

When ruling on Mother's motion to compel, the juvenile court assumed that R.R. was an appropriate adoptive placement, but still found that a move to her home would not be in the child's best interests. The court explained it had been shown it was not in W.B.'s best interests to be separated from her siblings, and it would be an exercise in futility to conduct a further assessment where placement with R.R. would necessarily defeat that goal. There is a well-established legislative preference for siblings to be placed together. (See § 16002, subd. (b) [agency shall make a diligent effort to place dependent siblings together in the same placement and develop and maintain sibling relationships unless contrary to safety and well-being of the siblings].) The Department repeatedly documented that W.B.'s best interests were served by being able to grow up with her two sisters, and Mother herself repeatedly expressed a preference for her girls to be together. Moreover, we determined in our prior opinion that the juvenile court did not abuse its discretion in finding W.B.'s best interests would be best served by a permanent plan of adoption with her sisters. (*In re W.B.*, *supra*, A156956.)

In light of the strong evidence that W.B.'s best interests were served by placement with Maureen D. and her sisters, Mother has failed to show the refusal to compel a further assessment resulted in a miscarriage of justice.

For similar reasons, even assuming that the Department abused its discretion in requiring Mother to prove her competency and her sobriety before proceeding with the relinquishment process, Mother has not demonstrated any prejudice. Importantly, the juvenile court, in ruling on her motion to compel, assumed Mother was competent and able to make the designated relinquishment. We will not reverse where Mother has not explained how the outcome would be any different had the Department not challenged her competence and sobriety. (Cf. *R.T., supra*, 232 Cal.App.4th at

p. 1301 [juvenile court may have reached more favorable result had relatives been considered for preference]; see also Civ. Code, § 3532 [the law does not require idle acts].) Likewise, even if the Department had provided Mother with counseling regarding the relinquishment process, as Mother contends it was required to do, she does not explain how that would have led to a more favorable result.

In sum, on this record, we conclude the juvenile court did not abuse its discretion in denying Mother's motion to compel an assessment of her voluntary relinquishment.

B. Termination of Parental Rights

Mother next contends the juvenile court erred in rejecting the parent-child beneficial relationship exception because it erroneously considered and relied upon an " 'unenforceable expectation' " or assumption that visitation would continue after termination of parental rights. Mother cites the following statement by the juvenile court at the section 366.26 hearing to argue the trial court relied on the possibility of future visitation in rejecting application of the exception: "I do believe that [Maureen D.] by her statements of maintaining relationships, as long as they are beneficial to the children, and that those contacts aren't to undermine their placement and security in her home."

Mother relies on *In re E.T.* (2018) 31 Cal.App.5th 68, 78, *In re C.B.* (2010) 190 Cal.App.4th 102, 127–129, and *In re S.B.* (2008) 164 Cal.App.4th 289, 300, to argue that a court cannot terminate parental rights based on an expectation or assumption that visitation will continue. But unlike in the cases Mother cites, the record here does not demonstrate the trial court considered or made assumptions about future visitation or contact when rejecting application of the parent-child beneficial relationship exception.

In determining whether the parent-child beneficial relationship exception applied, the juvenile court noted that W.B. had "never resided with her mother on a day-to-day basis," having lived first with R.R., then with another substitute care provider, then with Maureen D. The court acknowledged Mother had been consistent with visitation, but did not find that rose to the level of the parental bond anticipated to be an exception to adoption. At best, the court concluded, Mother was "a friendly, trusted adult during the visits." After noting "the friendliness of the child in regards to the matter really is more of a statement of her . . . emotional healthiness as anything else," the court stated it was not finding the parent-child beneficial relationship applied.

The court then apparently addressed the sibling relationship exception, recognizing that W.B. had other siblings besides A.M. and J.D., but concluding that the relationship with her two sisters "who are slated to be adopted by [Maureen D.]" was the relationship that was "critical or in the child's best interests over everything else."

The court then offered comments on "how much this process has been painful *to* [*R.R.*] *and her family*." (Italics added.) The court expressed hope that A.M. and J.D.'s therapist is working on the relationship "through letters and those types of things, and, hopefully, [R.R.] will follow the recommendations of the therapist to regain how those things can happen."

The court then stated: "I think some of the things are . . . that there has been so much change, especially for the older girls, that they're kind of afraid to put where their alliances are to kind of lose the ground that's under them, which it doesn't relate to [W.B.], of course, but I think will overall benefit the entire family. And I do think—*I do believe that* [*Maureen D.*] *by her statements of maintaining relationships, as long as they are beneficial to*

the children, and that those contacts aren't to undermine their placement and security in her home." (Italics added.) The court then adopted the recommended findings and orders in the case.

As is evident from a review of the transcript, the juvenile court did not discuss visitation *at all* during its ruling on the parent-child beneficial relationship exception. And the italicized language, on which Mother relies to say the trial court erred, appears to refer not to visitation between W.B. and Mother after termination of parental rights, but to Maureen D. "maintaining relationships" between R.R. and the children if they were beneficial.[9] Indeed, the court specifically referred to the impact of all the changes "especially for the older girls," noting "it doesn't relate to [W.B.], of course." Further, the comments were made to the parties after the court had already ruled on application of both the parent-child and sibling relationship exceptions. Because the record does not demonstrate that the trial court relied at all on an assumption that visitation with W.B. would continue after it terminated parental rights, we find no abuse of discretion.

C. Father's Joinder

Father joined in all of Mother's arguments raised in her briefs. Father does not cite any additional evidence or legal argument not addressed above, and accordingly, we affirm the juvenile court's orders denying the motion to compel further assessment and terminating parental rights as to Father for the same reasons. Although Father's notice of appeal also indicated he was

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[9] This interpretation is supported by the section 366.26 report, which indicated Maureen D. was "willing to maintain the relationship with [R.R.], as long as [R.R.] does not discuss the case and is clear regarding the purpose of the visits." The report also stated Maureen D. had started "written contact" with R.R. per the recommendation of A.M. and J.D.'s therapist, and was hopeful they would eventually have face-to-face visits.

challenging the order denying his section 388 petition, Father did not brief the issue, and accordingly, it is waived. (See, e.g., *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

III. DISPOSITION

The orders of the juvenile court are affirmed.

MARGULIES, ACTING P. J.

WE CONCUR:

BANKE, J.

SANCHEZ, J.

A158501
In re W.B.